

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

F&C BERKLEY PARK KC, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:19-cv-00787-GAF
	)	
MW BUILDERS, INC.,	)	
	)	
Defendant.	)	

**UNOPPOSED MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT AND  
AMENDED ANSWER**

Defendant MW Builders, Inc., by and through its undersigned counsel, and pursuant to Rules 14 and 15 of the Federal Rules of Civil Procedure, moves for leave to file its proposed Third-Party Complaint joining additional parties and to separately file its Amended Answer and Affirmative Defenses. In support hereof, MW Builders states as follows:

1. Counsel for MW Builders has conferred with counsel for Plaintiff who does not object to this requested amendment.
2. F&C Berkley Park KC, LLC, filed a lawsuit against MW Builders, Inc., for losses relating to the design and construction of an apartment complex in Kansas City, Missouri (“the Project”). FC hired MW Builders to act as general contractor for the construction of the Project.
3. On November 27, 2019, MW Builders filed its Answer and Jury Demand in response to Plaintiff’s Complaint.
4. Since that time, MW Builders has identified subcontractors that performed the work that Plaintiff now claims was deficient.
5. MW Builders Third-Party Complaint is intended to join those subcontractors to this action, which include Kimbel Mechanical Systems, Inc., Wolf Construction Companies and Innovative Construction Services, LLC. MW Builders hired Kimbel to perform mechanical,

plumbing and other services for the Project. MW Builders hired Wolf to perform framing, installation of fixtures and other services for the construction of the Project. MW Builders hired Innovative to install sheet rock and provide other services for construction of the Project. Plaintiff claims that certain deficiencies, defects or property damages exists as to the bathrooms at the Project, Each of these subcontractors performed construction services related to the installation of bathrooms at the Project.

6. Kimbel, Wolf and Innovative all entered into written contracts with MW Builders to perform services for this Project. Each of these subcontractors provided MW Builders with warranties, broad indemnity, a duty to defend, as well as other requirements for the subcontractors to perform their work properly in accordance with the project plans and specifications.

7. Plaintiff's Complaint appears to implicate the work performed by Kimbel, Wolf and Innovative for this Project.

8. Thus, MW Builders is seeking leave to file its Third-Party Complaint joining these subcontractors to this lawsuit. A copy of MW Builders Third-Party Complaint is attached hereto as Ex. A.

9. MW Builders is concurrently seeking leave to file its Amended Answer. The proposed Amended Answer is attached as Exhibit B. Specifically, MW Builders seeks leave to add Affirmative Defense No. 61 related to unjust enrichment. A copy of MW Builders' proposed Amended Answer and Affirmative Defenses is attached hereto as Exhibit B.

10. The Court's deadline to amend pleadings and join parties is February 24, 2020 (the deadline fell on February 22, 2020 which was a Saturday).

11. Leave of Court is required to assert third party claims or to amend pleadings.

FRCP 14(a)(1) permits a Defendant to assert claims against a nonparty who “is or may be liable to it for all or part of the claim against it.” The purpose of the rule is to permit as many claims related to the subject matter of the lawsuit to be disposed of in one action as possible. Similarly, FRCP 15(a) provides that leave to amend a pleading “shall be freely given when justice so requires.”

12. Trial is set to occur beginning June 21, 2021. This requested amendment should not impact the trial date.

13. The parties have exchanged Rule 26 Initial Disclosures but no other discovery has occurred. The parties have scheduled mediation in this matter for June 9, 2020. Permitting leave to amend to add these third parties will also require those parties to participate substantively at mediation.

14. This Motion is not sought for any wrongful purpose or delay, and will not prejudice any party.

**WHEREFORE**, Defendant MW Builders, Inc. respectfully requests the Court grant its Motion for Leave to file its Third-Party Complaint and Amended Answer and for such further relief as this Court deems just.

Respectfully submitted,

**McDOWELL, RICE, SMITH & BUCHANAN, P.C.**

By: /s/ Jason L. Buchanan

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**ATTORNEY FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2020, a true and correct copy of the foregoing was filed using the Missouri CM/ECF System, which will send notice of such filing to all counsel of record.

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